DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

CACR05-1399

May 31, 2006

ROBERT STIGGERS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CR2003-793]

HON. WILLARD PROCTOR, JUDGE

AFFIRMED

Appellant Robert Stiggers was convicted of first-degree murder and first-degree battery, for which he was sentenced to forty years' imprisonment and twenty years' imprisonment, respectively, to be served consecutively in the Arkansas Department of Correction. His sole point on appeal is a challenge to the sufficiency of the evidence. We affirm.

On January 10, 2003, the Little Rock Police Department responded to a shooting incident in the Hollingsworth Courts neighborhood. Officer Zachary Farley was the first to arrive, at which time he was directed to a vehicle in which shooting victim Raynaud Muldrew was discovered. He was pronounced dead at the scene. Sergeant Sidney Allen

arrived shortly thereafter and discovered Wardell Newsome lying on the ground near the vehicle. He had been shot four times in the right shoulder and once behind his right ear. While at the scene, Newsome told Sgt. Allen that appellant was the person who shot him.

Newsome was treated by Dr. Ronald Robertson at UAMS for non-life-threatening soft tissue wounds caused by the shooting. Detectives Eric Knowles and Keith Cockrell questioned Newsome about the incident while he was undergoing treatment at UAMS. Newsome explained that he had borrowed a friend's car earlier in the evening and picked up Muldrew. He told the detectives that Muldrew had purchased marijuana and then the two of them went to a liquor store to purchase cigarettes and a couple of Swisher cigars. While there, they saw appellant, who asked for a ride to Hollingsworth Courts. Appellant was riding directly behind Newsome in the back seat of the car, and during the ride, appellant apparently became aggressive and started yelling. Newsome stated that, at one point, he turned around and noticed that appellant was holding a small handgun. While following appellant's directions into the Hollingsworth Courts neighborhood, Newsome testified that appellant told them to "say goodnight" and "say your prayers" because he was going to kill them. Newsome indicated that he did not think appellant was serious because they had known each other and been friends for years.

Newsome explained that, as he pulled into an alley in the residential complex at appellant's request, appellant shot him behind the right ear. He pointed out that he lost consciousness immediately, and when he regained consciousness, he noticed Muldrew slumped over in the front passenger seat. Newsome explained that he then crawled out of the vehicle to look for help, and a neighbor called the police. Newsome recognized appellant's picture in a group of photos presented by Detectives Knowles and Cockrell,

and he again identified him as the shooter. Detective Knowles subsequently obtained an arrest warrant and arrested appellant later that night.

Appellant was charged with first-degree murder and first-degree battery and was tried before a jury on June 16, 2005. At the close of the State's case-in-chief, appellant moved for a directed verdict, (1) as to the murder charge based on the State's failure to present substantial evidence that he purposely caused the death of Muldrew, and (2) on the battery charge based on the State's failure to present substantial evidence that he caused serious physical injury to Newsome by means of a deadly weapon. The trial court denied both motions. Appellant's counsel renewed the motions at the close of the evidence, and they were again denied by the trial court. The jury convicted appellant of both counts and sentenced him as set forth above pursuant to a judgment and commitment order filed on June 22, 2005. Appellant filed a timely notice of appeal on June 28, 2005.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Saul v. State*, __ Ark. __, __ S.W.3d __ (Jan. 26, 2006). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm a conviction if substantial evidence exists to support it. *Id.* Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* Circumstantial evidence may constitute substantial evidence to support a conviction. *Whitt v. State*, __ Ark. __, __ S.W.3d __ (Mar. 16, 2006). The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis

consistent with innocence is for the jury to decide. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.*

Appellant contends that the State failed to provide sufficient evidence to support the conviction on the first-degree murder charge. A person commits murder in the first degree if, "with a purpose of causing the death of another person, he causes the death of another person." *See* Ark. Code Ann. § 5-10-102(a)(2). A person acts purposely with respect to his conduct or a result thereof when it is his conscious object to engage in conduct of that nature or to cause such a result. *See* Ark. Code Ann. § 5-2-202(1).

A criminal defendant's intent or state of mind is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime, and because intent cannot be proven by direct evidence, the fact finder is allowed to draw upon common knowledge and experience to infer it from the circumstances. *DeShazer v. State*, __ Ark. App. __, __ S.W.3d __ (Mar. 1, 2006). Because of the difficulty in ascertaining a defendant's intent or state of mind, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Id.*

Appellant maintains that the only direct evidence offered by the State was Newsome's testimony, and he asserts that it should have been disregarded because there was no reasonable probability that the testimony was correct. *See Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). Appellant claims that Newsome's testimony regarding his recollection of the events was physically impossible because the physical evidence recovered from the scene did not match his testimony. First, Newsome was adamant in his testimony that the Swisher cigars he and Muldrew had purchased to use to smoke the

marijuana were sitting in his lap. Those cigars were not recovered from the vehicle, but rather were found on Muldrew's body upon examination by the medical examiner.

Second, Newsome stated that he did not have a chance to stop the vehicle before he was shot and that he immediately lost consciousness when the first bullet hit him. He then testified that when he regained consciousness, he jumped out of the car with the car still running, in drive, and with the lights still on. However, when the police arrived, the car was not running. Appellant points out that the car was in park and the lights were turned off, which disproves Newsome's claim that he was driving the vehicle when shot. A review of the abstract shows that various officers testified that while the car was not running, they did not know if it had run out of gas, or whether the crime scene investigators or MEMS technicians may have turned off the engine and the lights prior to taking pictures. The officers testified that this discrepancy about the vehicle did not concern them with regard to the accuracy of Newsome's account of the incident.

Third, Newsome testified that two shots were fired in the vehicle, but only one spent shell casing was recovered from inside the vehicle. Appellant claims that fact makes it physically impossible for two shots, the first hitting Newsome and the second hitting Muldrew, to have been fired inside the vehicle as Newsome testified.

Appellant argues that, other than Newsome's "improbable and impossible" testimony, the State relied only on the inconsistent testimony from several officers and crime-scene investigators for the substantial circumstantial evidence needed to prove that he committed first-degree murder. As to the first-degree battery conviction, appellant makes the identical argument. He contends that the State failed to prove that he caused serious physical injury to Newsome with the purpose of causing serious physical injury to him. *See* Ark. Code Ann. § 5-13-201(a)(1). He asserts that the proof was insufficient,

based on the same analysis he relied upon with respect to the murder conviction, and he maintains that both convictions should be reversed.

The State vehemently denies that Newsome's testimony defies probability and asserts that it is appellant's version of the events that should be disregarded. In addition to Newsome's testimony and that of the officers involved, appellant failed to mention the testimony of Ms. Surtaj Eke, who lived in unit number twenty-one in the Hollingsworth Courts residential units at the time of the shooting incident. She testified that, on the night in question, her daughter approached her, afraid, and that upon turning down the television, she heard a gunshot. She then looked out the window from her second-story apartment and heard someone, who she later learned was Newsome, calling, "can somebody help me." She saw him stumbling out of a vehicle, crying for help, and then she heard another gunshot and the victim continuing to call for assistance. She called for emergency assistance, and upon returning to the window, saw someone approaching the victim and shooting him two more times. Ms. Eke described the shooter as a black male of average height, five- to six-feet tall, medium build, and wearing a white shirt. She was certain that there were only two individuals outside the vehicle at the time, the victim, Newsome, and the shooter.

Sergeant Allen testified that Newsome answered routine questions about his identity at the scene without difficulty and that he seemed pretty coherent when he identified appellant as the shooter. Likewise, Dr. Robertson testified that Newsome was alert and oriented upon arrival at UAMS. Dr. Stephen Erickson, a forensic pathologist from the Arkansas State Crime Lab, testified as to the single gunshot wound that killed Muldrew, stating it would have caused instant unconsciousness with the body going limp and slumping over right where he had been shot. He testified that the trajectory of the

bullet in Muldrew's head was consistent with the shot being fired from the backseat of the car, where appellant was sitting, if Muldrew had turned his head to the left. That action would be consistent with Newsome's account that he was shot first, causing Muldrew to look to his left from his position in the passenger's seat to see what had occurred.

Appellant's version of the event is not consistent with the weight of the evidence. He claimed that two armed black males came up to the car yelling about drugs, aimed pistols through the windshield, then let him go because he knew nothing about the drugs. It is undisputed that Muldrew had a gun in his pocket when his body was found by the officers. The State questions why, if appellant's version was accurate, Muldrew would have continued to hold the bag of marijuana that was found in his lap during that commotion instead of reaching for the gun to protect himself. Additionally, the spent shell found in the car matched others that were found in the alley, and the shells from the scene also matched the one removed from Muldrew's head.

This is a matter of credibility, and the Arkansas appellate courts have made it patently clear that the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *McKenzie v. State*, __ Ark. __, __ S.W.3d __ (May 12, 2005). The jury is not required to believe any witness's testimony, especially the testimony of the accused, because he is the person most interested in the outcome of the trial. *Winbush v. State*, 82 Ark. App. 365, 107 S.W.3d 882 (2003). The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Isom*, *supra*. Indeed, after a jury has given credence to a witness's testimony, this court does not disregard it unless it was "so inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ thereon." *Id.* One eyewitness's testimony, moreover, is sufficient

to sustain a conviction, and his testimony is not "clearly unbelievable" simply because it is uncorroborated or because it has been impeached. *Id.* Substantial evidence exists to support appellant's convictions; accordingly, we affirm.

Affirmed.

ROBBINS and BIRD, JJ., agree.